21 C.J.S. Courts § 198

Corpus Juris Secundum | May 2023 Update

Courts
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VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

1. General Considerations

§ 198. Retrospective operation—Factors considered

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Courts 100(1)

When determining whether a decision should be applied retrospectively, a court should consider the prior history of the rule in question and whether a "new rule" is announced.

In determining whether to extend full retroactivity to an overruling decision, the following factors are to be considered: (1) the nature of the substantive issue overruled must be determined, and if the issue involves a traditionally settled area of law and the new rule was not clearly foreshadowed, then retroactivity is less justified; (2) if the overruled decision deals with procedural law rather than substantive, retroactivity ordinarily will be more readily accorded; (3) common-law decisions, when overruled, may result in overruling a decision being given retroactive effect, since the substantive issue usually has a narrower impact and is likely to involve fewer parties; (4) if substantial public issues are involved, arising from statutory or constitutional interpretations that represent a clear departure from prior precedent, prospective application will ordinarily be favored; (5) the more radically the new decision departs from previous substantive law, the greater the

need for limiting retroactivity; and (6) the appellate court will also look to precedent of other courts that have determined the retroactive/prospective question in the same area of law in their overruling decisions.[1] A court should consider the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further its operation.[2] Courts may depart from the general rule of retroactivity when they determine that retroactive application could produce substantial inequitable results.[3] The court should also consider whether the decision establishes a new principle of law by overruling a precedent or deciding an issue of first impression not clearly foreshadowed by earlier cases and should weigh any inequity posed by retrospective application.[4] However, this test does not rely on the equities of the present case nor on whether litigants relied on an old rule or would suffer from retroactive application of a new one.[5] In determining whether a judicial interpretation is sufficiently foreseeable to merit application to a criminal defendant where that interpretation has not been given effect by a prior court decision, the starting point of the court's analysis is the statutory language at issue, its legislative history, and judicial constructions of the statute.[6] Whether retroactive application of a new rule is just and consonant with public policy in the particular situation presented depends on three factors: (1) justifiable reliance by the parties and the community as a whole on prior decisions, (2) a determination that the purpose of the new rule will not be advanced by retroactive application, and (3) a potentially adverse effect retrospectivity may have on the administration of justice.[7]

Reliance on a rule of law is irrelevant unless it is reasonable.[8] Deviant rulings by federal courts of appeals, particularly in dictum, generally do not provide the justified reliance necessary to warrant withholding retroactive application of a United States Supreme Court decision that construes a statute as Congress intended it.[9] A decision should not be applied retrospectively so as to destroy vested rights.[10] Retroactive invalidation of an established rule covering property rights is to be undertaken with great caution[11] or is indeed improper.[12] A rule that would impair rights or obligations arising out of a completed transaction is presumed not to be applied retroactively.[13]

CUMULATIVE SUPPLEMENT

Cases:

Factor as to whether, given history, purpose, and effect of decision, retroactive application would further or retard its operation did not favor request of electricity provider for prospective application of decision that two allotments in which Native-American tribe held fractional interest could not be condemned under statute permitting condemnation of lands allotted in severalty to Native-Americans, in that prospective application would undermine purpose and effect of decision.

25 U.S.C.A. § 357. Public Service Company of New Mexico v. Approximately 15.49 Acres of Land in McKinley County, New Mexico, 167 F. Supp. 3d 1248 (D.N.M. 2016).

Supreme Court's overruling of its prior holding that the statute listing circumstances constituting rape defines only a single offense did not have improper ex post facto effect, as applied to a defendant who was convicted of two forms of rape based on a single act of intercourse, since the new interpretation of the statute did not make criminal an act innocent when committed, nor did it authorize multiple punishment for that act. U.S. Const. Art. 1 § 10, cl. 1; Cal. Penal Code §§ 261, 654. People v. White, 2 Cal. 5th 349, 212 Cal. Rptr. 3d 376, 386 P.3d 1172 (Cal. 2017).

When Supreme Court interprets a constitutional amendment and concludes that it impliedly repeals a statute, that decision applies retroactively to when the amendment was enacted regardless of the balance of equities. Nev. Const. art. 3, § 1. Nevada Yellow Cab Corporation v. Eighth Judicial District Court in and for County of Clark, 383 P.3d 246, 132 Nev. Adv. Op. No. 77 (Nev. 2016).

[END OF SUPPLEMENT]

Footnotes

1 W. Va.—State v. Kennedy, 229 W. Va. 756, 735 S.E.2d 905 (2012).

2 U.S.—Bradley v. School Bd. of City of Richmond, 416 U.S. 696, 94 S. Ct. 2006, 40 L. Ed. 2d 476 (1974); Tehan v. U.S. ex rel. Shott, 382 U.S. 406, 86 S. Ct. 459, 15 L. Ed. 2d 453 (1966).

Tex.—Wessely Energy Corp. v. Jennings, 736 S.W.2d 624 (Tex. 1987).

3 U.S.—Bohus v. Restaurant.com, Inc., 784 F.3d 918 (3d Cir. 2015).

4 U.S.—Chevron Oil Co. v. Huson, 404 U.S. 97, 92 S. Ct. 349, 30 L. Ed. 2d 296 (1971) (disapproved of on other grounds by, Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993)); Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969).

Colo.—Wilson v. Jim Snyder Drilling, 747 P.2d 647 (Colo. 1987).

Ga.—Findley v. Findley, 280 Ga. 454, 629 S.E.2d 222 (2006).

Ill.—Elg v. Whittington, 119 Ill. 2d 344, 116 Ill. Dec. 252, 518 N.E.2d 1232 (1987).

Mo.—Sumners v. Sumners, 701 S.W.2d 720 (Mo. 1985).

Okla.—First of McAlester Corp. v. Oklahoma Tax Com'n, 1985 OK 52, 709 P.2d 1026 (Okla. 1985).

Tex.—Wessely Energy Corp. v. Jennings, 736 S.W.2d 624 (Tex. 1987).

Vt.—Solomon v. Atlantis Development, Inc., 145 Vt. 70, 483 A.2d 253 (1984).

Unconstitutional taxes

(1) A Supreme Court decision holding that unapportioned flat highway use taxes violate the Commerce Clause did not apply to taxation of highway use prior to the date of that decision since that case clearly established a new principle of law, the State's tax was entirely consistent with a previous line of cases, and retroactive application would produce substantial inequitable results.

U.S.—American Trucking Associations, Inc. v. Smith, 496 U.S. 167, 110 S. Ct. 2323, 110 L. Ed. 2d 148 (1990).

(2) Another decision, which invalidated a wholesale gross receipts tax on Commerce Clause grounds, applied retroactively either because the Supreme Court invalidated the tax while the appeal in the instant case was pending or because the prior decision did not overrule clear past precedent or decide a wholly new issue of first impression.

U.S.—Ashland Oil, Inc. v. Caryl, 497 U.S. 916, 110 S. Ct. 3202, 111 L. Ed. 2d 734 (1990).

5 U.S.—Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993); James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 111 S. Ct. 2439, 115 L. Ed. 2d 481 (1991).

6 U.S.—U.S. v. Richter, 796 F.3d 1173, 98 Fed. R. Evid. Serv. 36 (10th Cir. 2015), cert. dismissed in part by, 2016 WL 1251448 (U.S. 2016).

7 U.S.—Bohus v. Restaurant.com, Inc., 784 F.3d 918 (3d Cir. 2015) (applying New Jersey law).

8 N.J.—New Jersey Election Law Enforcement Com'n v. Citizens to Make Mayor-Council Government Work, 107 N.J. 380, 526 A.2d 1069 (1987).

9 U.S.—U.S. v. Donnelly's Estate, 397 U.S. 286, 90 S. Ct. 1033, 25 L. Ed. 2d 312 (1970).

10 Fla.—Brackenridge v. Ametek, Inc., 517 So. 2d 667 (Fla. 1987).

Ohio—Zagorski v. South Euclid-Lyndhurst City School Dist. Bd. of Educ., 15 Ohio St. 3d 10, 471 N.E.2d 1378, 21 Ed. Law Rep. 1001 (1984).

11 Mass.—Sullivan v. Burkin, 390 Mass. 864, 460 N.E.2d 572 (1984).

12 Ark.—Otter Creek Development Co. v. Friesenhahn, 295 Ark. 318, 748 S.W.2d 344 (1988).

13 Ky.—Kindred Hospitals Ltd. Partnership v. Lutrell, 190 S.W.3d 916 (Ky. 2006), as corrected, (June 12, 2006).

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